IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| First Named Inventor | : | Timothy J. Bloch | |
| Appln. No. | : | 10/081,921 | |
| Filed | : | February 20, 2002 | Group Art Unit: 2193 |
| Title | : | SYSTEM AND METHOD FOR DEPLOYING AND IMPLEMENTING SOFTWARE APPLICATION OVER A DISTRIBUTED NETWORK | Examiner: Mark P. Francis |
| Docket No. | : | J267.12-0001 | |

# PRE-APPEAL BRIEF REQUEST FOR REVIEW

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## INTRODUCTION

This request for review follows the Final Office Action mailed on February 13, 2006 and Advisory Action mailed on June 23, 2006. Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request, and the following remarks are presented to explain the basis for this request. Enclosed with this request is a notice of appeal and the appropriate fees.

## REMARKS

In the final Office Action mailed on February 13, 2006, claims 1-5 and 8-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Rice III (U.S. Pub. 2002/0174010), and dependent claims 6 and 7 were rejected under 35 U.S.C. § 103(a) over Rice in view of Lloyd (U.S. Patent No. 6,779,178). Claim 18 also was rejected under 35 U.S.C. § 112, second paragraph as being indefinite. The basis of the rejection appears to be the fact that claim 18 depended from a higher numbered claim (claim 21).

In the Amendment filed April 13, 2006, claim 18 was canceled and replaced by new claim 22. Although the Advisory Action did not indicate whether the Amendment was entered, it did refer to "claims 1-22 " in the second line of page 2. Thus, claims 1-17 and 19-22 are currently in the case.

**Claim Rejections under 35 U.S.C. § 102**

In the Office Action, independent claims 1-5 and 8-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Rice. In order to reject a claim under § 102(e), the reference must teach each and every limitation of the claims. MPEP 2131; *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987). The Rice reference fails to meet this requirement.

The present invention, as defined by independent claims 1, 8 and 16, deploys applications over a distributed network to an Internet-enabled device in a manner that is fundamentally different from Rice. In the present invention, text files are downloaded from a server to the device. These text files (or application logic files) contain embedded application logic. The device includes an application assembler (or program assembler) that runs on the device and which downloads the text files from the server. The assembler retrieves the embedded program logic from the downloaded text files, assembles the retrieved program logic into a functioning application, and runs the functioning application on the device. By the way in which the application is assembled at the device, the application program can run on the device regardless of whether the device remains connected to the server.

In contrast, Rice does not download text files, extract embedded program logic and assemble that logic into an application program to run. Rather, Rice downloads executable program code from the server. That executable code is for the same programs that are running on the server, which allows the device in Rice to run those same programs when the device is not connected to the remote server.

In the Advisory Action, the Examiner relied upon paragraphs 0107-0109 of Rice. That reliance is misplaced, as discussed in the Amendment at pages 16-18.

Rice does not teach the **downloading of a text file containing program logic** that is then **assembled by an assembler (i.e., an Application Virtual Machine or AVM) into an application** that is **run by an AVM on the local device**. Rice refers to **downloading of executable code**, preferably executable code for a **terminal emulator** that allows the user to interact with **applications running on a remote server**.

Rice discusses the continued downloading of **executable code** comprising the same "fat" programs that are running on the server. That allows the user to run those same programs on the local device when not connected to the remote server.

Applicant's invention does not utilize this mode of operation in any manner. It does not download executable program code for the application. It downloads text files that contain abstract program logic definitions which are used by the AVM to assemble a working application on the local device. Applicant does not require a terminal emulator that is used in conjunction with application programs running on a server, as Rice does.

In Applicant's invention, the only point that involves downloading executable code is the AVM itself, which is not an application. Rather, the AVM is an application assembler/runner, comprising a program that retrieves text files, extracts abstract program logic definitions from the text files, assembles applications from the extracted program logic definitions, and runs the assembled applications entirely on the local device.

The Examiner seems to have misunderstood the fundamental difference between a thin client that paints output from an application running on a server (Rice) versus a rich client that assembles and runs an application that is completely resident on the local client device and is NOT being run on the server (the present invention).

At no point does Rice teach the **downloading of a text file containing program logic (i.e. not in executable form) that is then assembled by an assembler (i.e. AVM) on the local device into an application that is run by the AVM on the local device**. In NONE of the Examiner's arguments in the Office Action or the Advisory Action does he cite any statements from Rice that would prove this. Instead the Examiner repeatedly states that downloading information that allows the user to start a program on a remote web server and then view and interact with it remotely is somehow the same thing, which it is not.

Because Rice does not teach creating applications at the device by downloading text files containing embedded application logic, retrieving the embedded program logic, assembling the retrieved program logic into an application, and then running that application on the device, Rice does not anticipate independent claims 1, 8, or 16, or any of the dependent claims.

The rejection under 35 U.S.C. § 102 is factually unsupported. Rice does not teach all elements recited in the claims, and the rejection of claims 1-5, 8-17 and 19-22 is improper.

**Claim Rejections under 35 U.S.C. § 103**

The rejection of claims 6 and 7 based upon Rice and Lloyd fails for the same reasons. Neither reference teaches the subject matter of independent claim 1, as discussed above.

The confusion between what runs on the client and what runs on the server is further exemplified by the Advisory Action, (page 2, final paragraph) which argues that Lloyd's Common Gateway Interface (CGI) scripts (that by definition run on a server) somehow prove that Rice discloses a script engine on the local client device. By the very words used, the Advisory Action acknowledges that the web server of Lloyd runs CGI scripts on the server, not the local device.

**Conclusion**

Based upon the foregoing and the evidence presented in the record, claims 1-17 and 19-22 are in condition for allowance. Reconsideration and notice to that effect is respectfully requested.

Respectfully submitted,

KINNEY & LANGE, P.A.

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By: _____

David R. Fairbairn, Reg. No. 26,047
THE KINNEY & LANGE BUILDING
312 South Third Street
Minneapolis, MN 55415-1002
Telephone: (612) 339-1863
Fax: (612) 339-6580

DRF:ks